IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9070 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

JAGJIVAN M BAGTHARIA

Appearance:

1. Special Civil Application No. 9070 of 1994

MR YOGESH S LAKHANI for Petitioner No. 1

MS SEJAL K MANDAVIA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/04/2002

ORAL JUDGEMENT

Heard Mr.Y.S.Lakhani, learned advocate appearing on behalf of the petitioner Corporation and Ms.Sejal K. Mandavia, learned advocate for respondent workman.

In the present petition, the petitioner Corporation has challenged the award passed by the Labour Court, Junagadh in Reference No.1356 / 1987 - New Number 994 / 1990 dated 17th December, 1993, wherein the labour court has granted reinstatement with 25 % backwages and continuity of service. Learned advocate Mr.Lakhani has submitted that the labour court has committed gross error in exercising the powers under Section 11-A of the Industrial Disputes Act, 1947. Mr.Lakhani has also submitted that the labour court has committed gross error in coming to the conclusion that charge of negligence is found to be proved but no dishonesty and mala fide of misappropriation is not proved. He also submits that in cash, Rs.72.75 ps was found to be excess, which is gross financial irregularity committed by the respondent workman . He further submits that not to make entry in column No.6 of the way bill, it transpires clear ill intention on the part of the respondent workman to misappropriate the fund of the Corporation and therefore also, the labour court has committed gross error while granting reinstatement with continuity and 25 % backwages.

Learned advocate Ms.Sejal K. Mandavia for respondent wrokman has submitted that in chargesheet, there was no allegation made against the respondent wrokman as to dishonesty and misappropriation but the allegation against the respondent workman that he had not noted the excess amount in Col.No.6 of way bill and this aspect has been rightly appreciated by the labour court and considering this allegation, dismissal order is found to be unjustified by the labour court while exercising the powers under Section 11-A of the I.D.Act. She also submits that denial of 75 % backwages by the labour court, which amounts to penalty and accordingly, the labour court has only granted 25 % backwages of the interim period and therefore, the labour court has not committed any error which requires any interference by this Court while exercising the powers under Article 226 and 227 of the Constitution.

I have considered submissions made by learned advocates for the parties. Before the labour court, statement of claim was filed by the respondent workman vide Exh.4 and written statement was filed by the petitioner at Exh.5. Thereafter, documentary evidence has been produced by the petitioner vide Exh.6 which exhibited as Exh.11 to 20. Thereafter, the respondent workman has submitted purshis vide Exh.9 with request to labour court to exercise the powers under Section 11-A of the I.D.Act and further requested to grant some part of

the backwages of the interim period. No oral evidence of the either side led before the labour court. Thereafter, the labour court has considered the merits of the matter and ultimately the labour court has come to the conclusion that explanation given by the respondent workman that when cash was checked by the checking staff, at that time from one passenger travelling from Porbandar to Junagadh, who had given currency note of Rs.100/- and remaining amount remained with the conductor but since the said amount was deposited with Porbandar Depot, the workman had applied for refund of the said amount. The workman had also given statement to this effect even before the checking inspector. This statement was also produced before the inquiry officer dated 25th May, 1986. The labour court has come to the conclusion that defence pointed out by the respondent workman is not believed by the competent authority on the ground that this amount in excess pertaining to the passengers but there was no any incident pointed out in the report stating that this amount is recovered by the conductor and not issued the tickets. Therefore, ultimately the labour court has come to the conclusion that at the most it amounts to negligence not to make note in Col. No.6 of way bill and therefore, punishment of dismissal has been considered to be unjustified by the labour court while exercising the powers under Section 11-A of the I.D.Act, 1947. The labour court has also come to the conclusion that this is not case of dishonesty and misappropriation and the amount in question has been deposited by the respondent workman before the Corporation and there was no such allegation about dishonesty and misappropriation. Therefore, the labour court has come to the conclusion that dismissal is harsh and unjustified punishment required to be modified. However, so far the backwage is concerned, the labour court has come to the conclusion that the matter is pending before the labour court more than 7 years and without any serious misconduct the respondent workman remained unemployed and therefore, the labour court has granted 25 % backwages of the interim period.

I have perused the entire award passed by the labour court. The labour court has denied 75 % backwages of the interim period to the respondent workman which amounts to penalty of misconduct of negligence which found to have proved and reinstatement has been granted with continuity of service. Therefore, according to my opinion, the labour court has not committed any error while passing such award. There is no jurisdictional error and procedural irregularity committed by the labour court which requires any interference of this Court while

exercising the powers under Article 226 and 227 of the Constitution. Learned advocate Mr.Lakhani also fails to point out any other infirmity in the award under challenge and therefore, there is no substance in this petition and hence, the same is rejected accordingly.

Learned advocate Ms.Mandavia for respondent workman has submitted that inspite of no stay is granted by this Court while issuing Rule on 13th July, 1994, the amount of backwages is not paid so far to the respondent workman and therefore, the petitioner may be directed suitably to pay such amount within some stipulated time. Considering the request, it is directed to the petitioner Corporation to pay 25 % backwages of the interim period to the respondent workman within period of three months from the date of receiving a copy of this order.

Rule stands discharged. No order as to costs. Direct Service to respondent is permitted.

Date : 1-4-2002 [H.K.RATHOD, J.]

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